



March 19, 2001

Mr. John L. Schomburger
Assistant Criminal District Attorney
Collin County
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR2001-1070

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145050.

The Collin County District Attorney's Office (the "county") received a request for information related to County Sheriff's office case number 97-17589. You indicate that clarification of this request was required and that the requestor responded to your request for clarification, providing additional information which enabled you to identify information responsive to this request. We find that the ten business day requirement of section 552.301(b) of the Government Code was tolled during this period of clarification and that the county's request for decision to this office is therefore timely. *See* Open Records Decision No. 663 at 7 (1999).

You assert that a portion of the responsive information is not subject to the Public Information Act (the "Act"). You also claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.130 of the Government Code. You indicate that the interests of a third party may be implicated by the release of this information. You notified this third party of the request and the third party provided comment to this office. You have provided responsive information, including representative samples of photographs and reporter's records.¹ We have considered your argument and the comments of the third party, as provided by sections 552.304 and 552.305 of the Government Code. We have reviewed the submitted information.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the represented classes of requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We first note that the submitted materials include information, including an audio tape of a grand jury proceeding, that is not subject to the Act. This office has concluded that grand juries are not governmental bodies subject to the Act. *See* Open Records Decision No. 513 (1988). To the extent that any of the submitted information relating to grand jury proceedings is in the custody of the district attorney as an agent of the grand jury, such information is in the constructive possession of the grand jury and therefore is not subject to disclosure under chapter 552 of the Government Code.

We next note that the submitted materials include information made public by section 552.022 of the Government Code. This section provides several categories of information that are not excepted from required disclosure unless they “are expressly confidential under other law.” In pertinent part this section reads

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

...

- (17) information that is also contained in a public court record [.]

The submitted materials include receipts, vouchers, and similar items, subject to section 552.022(a)(3), and documents which have been filed with a court and are therefore subject to section 552.022(a)(17). None of the information in these documents is made confidential by other law. *See, e.g., Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (court record is public information). This information must be released.

The included materials also include medical records. The release of medical records is governed by section 159.002 of the Occupations Code, the Medical Practices Act (“MPA”), rather by chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *Id.*

We next address the application of section 552.108(a)(3) to the submitted materials. This section excepts from required public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime, if

it is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or it reflects the mental impressions or legal reasoning of an attorney representing the state. In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court ruled that where a district attorney's entire litigation file is sought, the work product privilege extends to the entire file because that material reflects the attorney's mental impressions. We agree with the county that the current request is for the entire file on the subject prosecution. We therefore conclude that most of the information in this file is excepted from disclosure by section 552.108(a)(3)(B) of the Government Code in compliance with the ruling in *Curry*. However, section 552.108 does not make information confidential, and therefore, information made public under subsections 552.022(a)(3) and (a)(17) of the Government Code must be released. Also, section 552.108 does not except from public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). Therefore, except for basic information and documents which are subject to section 552.022 of the Government Code, as set out above, you may withhold the subject information from disclosure. As this discussion disposes of this request, we do not address your other arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 145050

Encl: Submitted documents

cc: Mr. Robert D. Burns, III
7741 Querida Lane
Dallas, Texas 75248
(w/o enclosures)